

DAVID E. RICE

Natural Resources Protection Act

Removal of Special Condition #5 – South Bristol

EXCERPTS FROM THE DEPARTMENT'S RECORD

- NRPA Minor Revision Application & Response to Staff Information Requests dated July 2, 2009
- DMR review comments dated September 6, 2007
- DMR review comments dated August 31, 2009
- Photos of Rice pier at Jones Point dated July 16, 2008
- Photos of Rice float and mooring at "The Gut" dated March 6, 2009
- Meeting Notes dated March 11, 2010
- Supplemental Information dated March 12, 2010 (The attachments referenced in this document can be seen in the Appeal Documents, known as Appendix 8, page 2, and Page 9.)
- Presentation by Dr. Tom Trott entitled "Ecology and Habitat" dated February 10, 2010
- Interested persons correspondence dated April 17, 2009
- Interested persons correspondence dated July 20, 2009
- Interested persons correspondence dated July 27, 2009
- Interested persons correspondence dated February 8, 2010

#L- 23698-4E-B-M
ATS # 70201
Fees Paid 3134.00 CK# 3346
Date Received 6/24/09

MINOR REVISION APPLICATION

For Site Location, Natural Resources Protection Act & Stormwater Projects

This form shall be used for minor revisions to a project that has received previous Site Law, NRPA or Stormwater Law approval from the Department, where the revision(s) significantly decreases or eliminates an environmental impact, does not significantly expand the project, does not change the nature of the project or does not modify any Department findings with respect to any licensing criteria. If significant project changes are proposed, then an amendment application will be required by the Department.

Please contact the DEP for current fee schedule information. The fee schedule is updated every November 1. The fee is payable to "Treasurer, State of Maine", and MUST accompany the application. Stormwater revisions do not require a fee.

Please type or print in black ink only

1. Name of Applicant:	<u>DAVID E. RICE</u>	4. Name of Agent:	<u>Permits Agent</u>
2. Applicant's Mailing Address:	<u>P.O. Box 15</u> <u>WALPOLE, ME 04573</u>	5. Agent's Mailing Address:	<u>LEBLANC ASSOCIATES, INC.</u> <u>Joseph D. LeBlanc, President</u> <u>67 Dipper Cove Road</u> <u>Orr's Island, ME 04066</u>
3. Applicant's Daytime Phone #:	<u>207-563-5464</u>	6. Agent's Daytime Phone #:	<u>207-833-6462</u>
LOCATION OF ACTIVITY			
7. Name of Project:	<u>DAVID E. RICE</u>		
8. Name of Town where project is located:	<u>South Bristol</u>	9. County:	<u>LINCOLN</u>
REQUIRED INFORMATION:			
10. Existing DEP permit number:	<u>L-23698-</u> <u>4E-A-M</u>	11. DEP Project Manager for previous application (if known):	<u>BETH CALLAHAN</u>
12. Description of Proposed Change: (Use additional sheet, if necessary)	<u>REMOVE/DELETE CONDITION 5:</u> <u>"NO TRAP STORAGE WILL BE PERMITTED</u> <u>ON THE PERMANENT PIER."</u>		

Provide all documentation necessary to support the proposed change. This documentation should include, as appropriate, revised site plans, construction drawings, and technical data such as HHE-200 forms. (If you are unsure of what information to include, please contact the original DEP project manager, or the Division of Land Resource Regulation in the appropriate regional office for assistance.)

This completed application form, fee and all supporting documents summarized above shall be sent to the appropriate DEP Office in Augusta, Portland or Bangor.

Bureau of Land and Water Quality 17 State House Station Augusta, ME 04333 Tel: (207) 287-3901	Bureau of Land and Water Quality 312 Canco Road Portland, ME 04103 Tel: (207) 822-6300	Bureau of Land and Water Quality 106 Hogan Road Bangor, ME 04401 (207) 941-4570
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CERTIFICATIONS / SIGNATURES on PAGE 2

IMPORTANT: IF THE SIGNATURE BELOW IS NOT THE APPLICANT'S SIGNATURE, ATTACH LETTER OF AGENT AUTHORIZATION SIGNED BY THE APPLICANT.

By signing below the applicant (or authorized agent), certifies that he or she has read and understood the following :

CERTIFICATIONS / SIGNATURES

"I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein."

DAVID E. RICE
(PLEASE SEE Exhibit 4)

Signed: *Joseph D. LeBlanc*

Title: *President* 04/19/09

Signed: *Permits Agent*
LEBLANC ASSOCIATES, INC.
Joseph D. LeBlanc, President
67 Dipper Cove Road
Orr's Island, ME 04066

Notice of Intent to Comply
with Maine Construction
General Permit

N/A

If over one acre of new disturbance will result as part of the proposed minor revision, please sign here acknowledging that with this Site or NRPA minor revision form and signature below, I am filing notice of my intent to carry out work which meets the requirements of the Maine Construction General Permit. I have read and will comply with all of the MCGP standards.

Signed _____ Date: _____

NOTE: If a Notice of Intent is required, you must file a Notice of Termination (NOT form available from the Department) within 20 days of completing permanent stabilization of the project site.

DAVID E. RICE
South Bristol, Maine
PIER, RAMP & FLOAT SYSTEM

Permit # L-23698-4E-A-M

MINOR REVISION APPLICATION

06-19-09

**Request removal / deletion of Condition 5. of DEP Permit # L-23698-4E-A-M:
ie., "5. No trap storage will be permitted on the permanent pier."**

FOREWORD

Last fall, 2008, because of the exiting Condition 5 of his DEP Permit, the Applicant, with the help of four others, removed all 600 bulky traps, weighing 40 lbs + each, plus related gear, from his completed pier. This was done in each of the helper's spare time over a period of some three weeks, until all traps were removed and stored on the upland. Great care had to be taken during this bulk handling process in order to not disturb or affect the existing leach field located on the upland property.

Early this spring, 2009, aware that plaintiffs to his permits for the pier, ramp and float system continue to look for any opportunity to complain, the Applicant contacted the DEP Project Manager, Beth Callahan, to advise her that he would soon begin the seasonal process of cleanup of traps and related gear of dirt and debris from winter storms, and placement of this equipment back on the pier for pre-season repair, maintenance and assembly of trap strings on the dirt-free, level working surface which the pier provides. This action was confirmed as acceptable to the DEP.

Despite this, the DEP again started to receive calls from the plaintiffs, complaining about any traps on the pier, not because it was a problem, but solely because of the existence of Condition 5, in effect an opportunity for further, continued, baseless harassment of this commercial lobsterman.

On the afternoon following the Board of Environmental Protection's (BEP) April 16, 2009 denial of their appeal regarding the Applicant's DEP Permit, these same plaintiffs were collectively seen taking photographs of the Applicant's pier from the neighbor's property, and of the traps he had begun assembling on his pier, as he had so advised the DEP Project Manager. On April 17, 2009, the day after the BEP denial, the plaintiffs filed a written complaint regarding the presence of traps on the Applicant's pier.

This was followed by multiple emails (and likely calls) to DEP Field Enforcement, and possibly others, regarding the presence of traps on the pier.

There is no way, not is it reasonable or practical for the Applicant, nor any other lobsterman, to distinguish between whether traps and related gear are on the pier as part of the normal fishing / equipment handling cycle or being "stored". Further, conclusions of highly prejudiced third parties cannot be relied upon regarding such matters.

This is unacceptable. The Applicant has a right to conduct his commercial lobster / business activities in a reasonable manner, without accounting for each and every step of the lobster fishing cycle, especially to third parties who do not, nor want to, understand what a lobster fisherman goes through from early spring to late fall / and sometimes through December each year, to provide a source of income for himself, and as required, a sternman.

The only practical solution is to remove this unreasonable and unnecessary Condition #5 and allow the Applicant to have traps present on the pier at any time of the year, for any reason.

REASONS FOR THE REQUEST

Trap Mobilization, Maintenance, Servicing, Repair, Refreshing / Circulating, De-mobilization and Storage on the Commercial Pier

The 12' width and 110' length of the pier was selected to meet the specific needs of the Applicant, who commercially fishes 600 lobster traps. A wider pier was originally considered, up to the allowed 16' width for a commercial wharf under DEP guidance. Prior to submission of the DEP / NRPA application, the Applicant agreed that a 12' wide pier would marginally meet his requirements for sufficient room to mobilize his traps and gear at the beginning of the season, service, rest, cycle, repair, maintain this equipment during the fishing season, and de-mobilize / remove his traps and related gear from the water at the end of the season.

Regarding the 12' pier width, as described above and previously, the Applicant requires sufficient capacity on the pier to reasonably service, repair, periodically cycle and/or maintain his 600 traps and fishing gear, at a location which is capable of providing reasonable security and protection from theft and/or malicious actions by third parties.

As also discussed previously, most of the in-season maintenance and repair work will be performed on the fly as time permits, on the pier which provides a level, stable work platform, when the traps are removed and recycled in-season, when time is of the essence to be back on the water fishing.

To expand further, major pre-season work on this fishing gear will be performed on the pier while readying and staging traps and related gear, before loading onto the Applicant's fishing boat, and post-season, as the fishing season winds down and stormy weather becomes more frequent, wherein the bulk of this fishing equipment is pulled from the water, and readied for

winter storage. The Applicant is older, such that any reasonable, ready access to his equipment and gear, on the working level of the pier, will expedite the work and further reduce the drudgery of this bulk-handling fishing occupation.

The permitted pier is designed to provide this.

The Applicant puts in long hours on the water during the fishing season, leaving early in the morning, and returning at the end of the fishing day, every fishing day. The Applicant requires the capacity to readily handle, service, maintain, repair, circulate, and store his 600 traps, on and off the pier, before, throughout and after the lobster fishing season.

During a relatively limited portion of the spring, once weather conditions permit and before the fishing season begins, the Applicant needs to ready his 600 traps and related gear on the pier, in a location immediately accessible to the lobster boat, in order to bulk handle his traps onto the boat for setting, all in a relatively short period of time, as the season begins (when the lobsters start to move in from deeper waters).

Further, traps are periodically serviced, cleaned, repaired and "rested" throughout the season, in order to make them more effective when lobster fishing. To accomplish this, the Applicant needs to approach the pier at high tide, with his lobster boat, throughout the season, in order to handle traps and gear on and off the boat, directly to and from the pier. At the end of the season, in late fall, when lobster fishing results begins to tail off, and/or weather becomes a significant factor, the Applicant's traps are then removed from the water, again in bulk manner, over a relatively short period of time, which requires adequate, readily available capacity, for approaching the pier at high tide and directly off-loading the traps onto the pier.

In summary, the permitted pier is necessary to properly support the fishing activities of the Applicant, in that it:

- provides the capacity to readily handle and mobilize, circulate, service, repair and maintain; and, at the end of the fishing season, de-mobilize his 600 traps, on and off the pier, to and from his boat, in a timely manner, throughout the lobster fishing season, which from beginning to end can consist of mid-March into early December, depending on the lobster habits and habitat in any particular season.
- is located where he can directly monitor his fishing gear, traps and boat in a manner which precludes theft and/or malicious actions by third parties

The Applicant has also constructed a small, low profile, equipment storage shed (8' x 10' x 10' high), at the beginning of the pier, and adjacent to the relatively steep, upland embankment, to store his tools, maintenance, spare and repair parts, extra trap line, etc.

The Applicant is older, such that any reasonable, ready access to his equipment and gear, on the working level of the pier, will further reduce the drudgery of this bulk-handling fishing

occupation. The location and small size of the permitted shed, close to the steep embankment, masks its view-ability both looking in from the cove as well as looking along the shore in profile.

The alternative of employment of separate, moored floats as trap and gear storage/work areas had been previously discussed with the Applicant. Such an application is a choice typically made when a commercial fisherman has no other reasonable options. It results in a very confined, inefficient work area, separated from land-based power tools, and from spares and repair parts and materials, which are usually stored in a safe, secure, storage facility on or near a pier, as is now available to the Applicant. When an Applicant already has a stable work surface available, why introduce the additional footprint of multiple, large storage floats.

In addition, on or off-season, moored-float storage of traps and gear poses a constant problem regarding theft and malicious damage by third parties. Further, during the off-season, such floating storage platforms would expose the Applicant's traps, gear, as well as the float itself, to frequent, severe winter storm conditions. In the event of storm damage during the winter, including a float breaking away from its mooring, the Applicant may not be able to address such a situation in a timely manner, as it is likely that his boat would already be securely stored on land for the winter.

In summary, the pier, in conjunction with the ramp and float, meets the needs of this commercial fisherman in a reasonable and practical manner.

WINTER TRAP STORAGE

The Applicant's pier provides many functions as described above in detail, for up to nine months each year, depending on the lobsters' habits and habitat in that particular year.

The pier is located in the corner of a cove, presenting minimal winter visibility to either abutter, during the harsh winter months. The immediate left abutter structure is a summer rental cottage, whose main view in the summer months is straight out, with piers on both their left and right periphery. This summer cottage is not occupied during the winter. Beyond that is a commercial fishing pier complex with multiple ramps and floats, of significantly larger footprint than the Applicant's structure (please see the photo set).

The right abutter(s) spend the winter and winter-boundary months in Paris, France, and are long gone before the end of, and after the beginning of up to the annual, effectively eight-to-nine month fishing activity cycle described above. Further, their view of the pier, even when present, is obstructed by trees, as can be seen in the photo set.

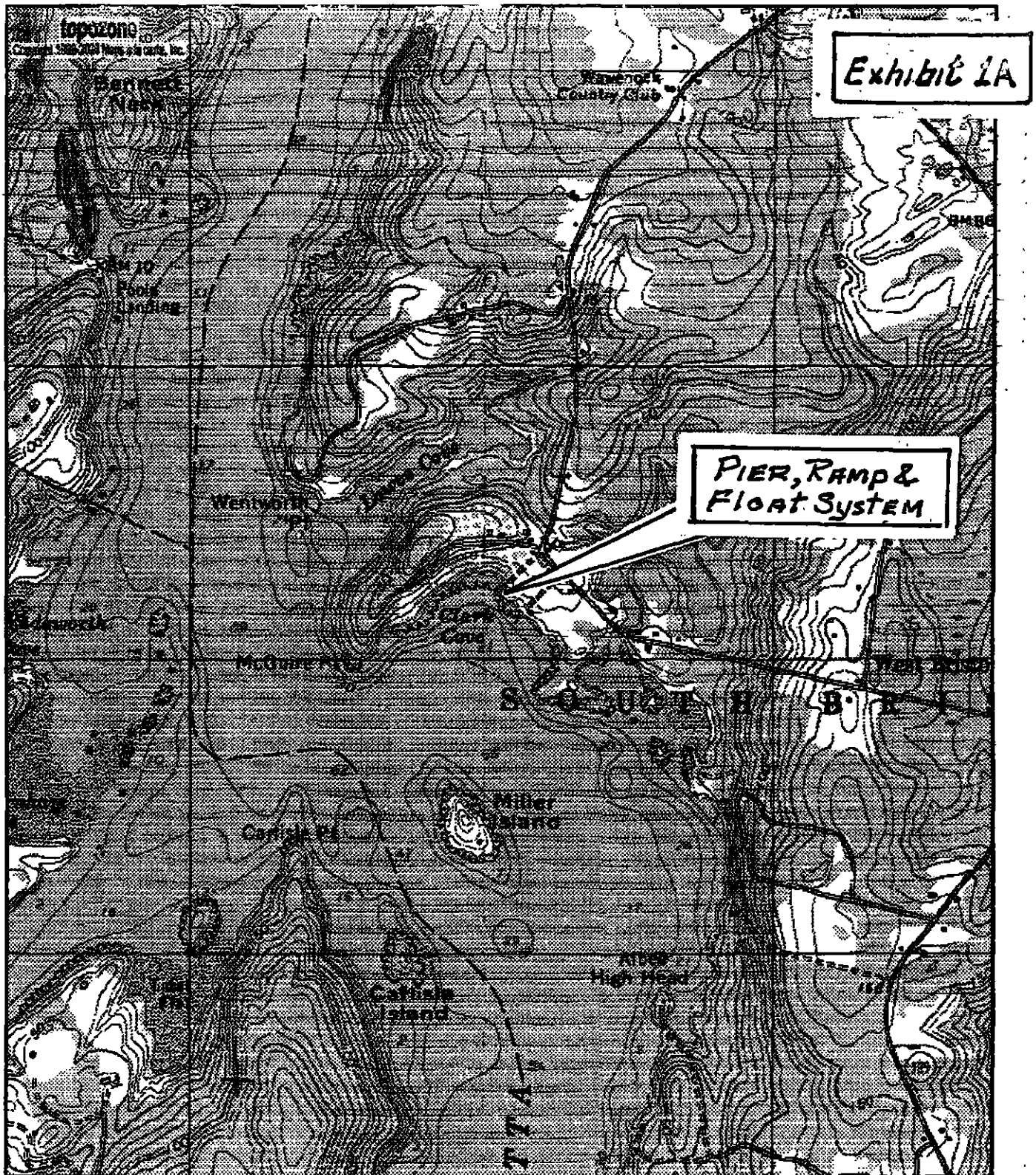
Finally, this shoreline adjacent to the Applicant's pier presents a harsh environment during the winter season, with few visitors.

Given that the pier was constructed and permitted to meet the fishing cycle needs of the Applicant during most of the year, it is reasonable to employ this pier for trap storage during

the brief winter months of inactivity, and not require the Applicant to needlessly expend the labor, cost and resources to remove these traps of the pier to an upland storage location.

In summary, the pier was designed to meet the functional needs of the Applicant, a commercial fisherman, during up to nine months a year. It is reasonable to allow the Applicant the superior advantages of this pier for trap storage during the winter months as well.

Therefore, for the reasons described above, the Applicant respectfully requests the removal / deletion of Condition 5 of DEP Permit # L-23698-4E-A-M.

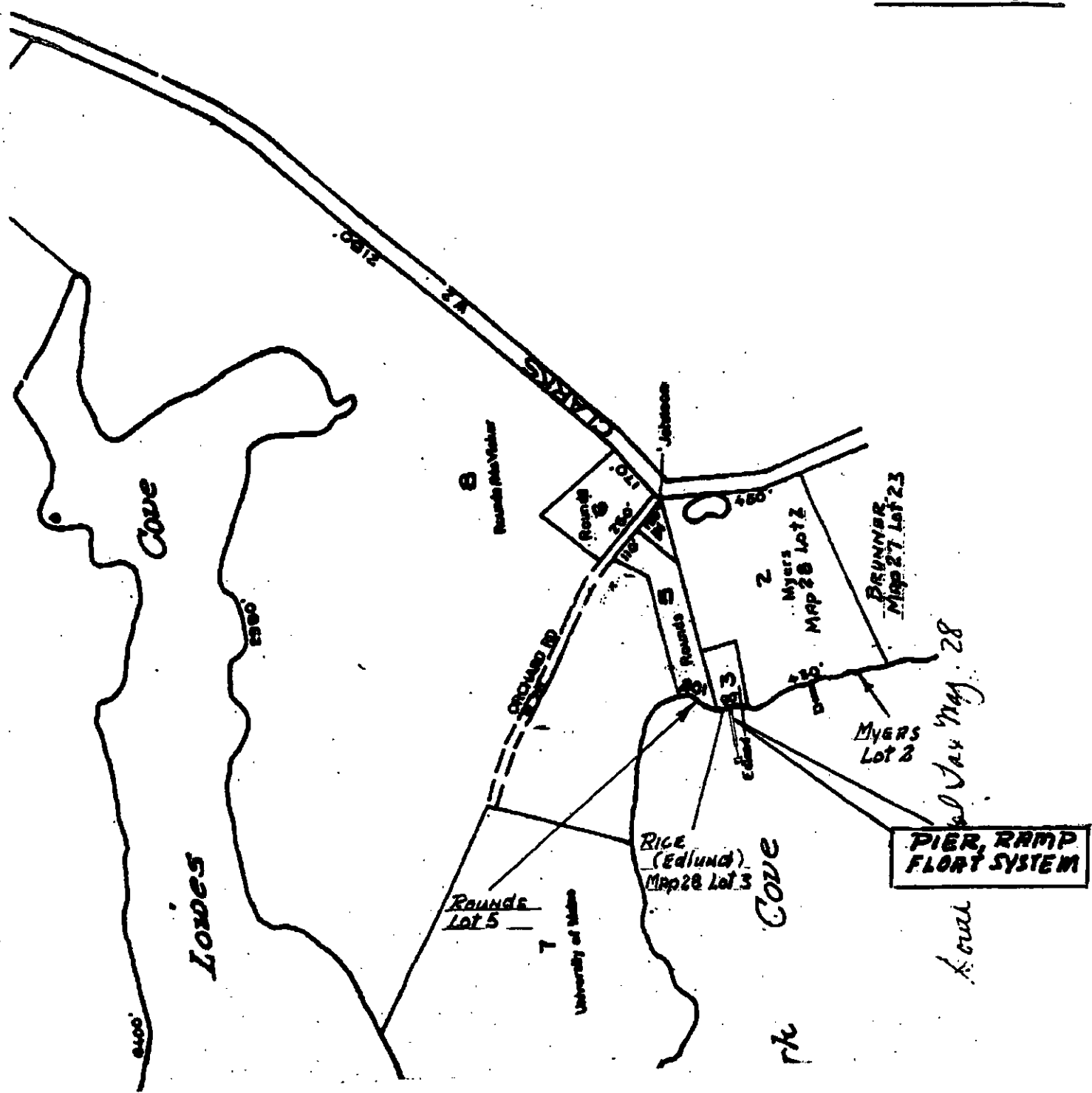


0 0.3 0.6 0.9 1.2 1.5 km
0 0.2 0.4 0.6 0.8 1 mi

43° 55.91'N, 69° 34.31'W (NAD83/WGS84)
South Bristol Town House, USGS Bristol (ME) Quadrangle
Projection is UTM Zone 19 NAD83 Datum

M
G
M=-16.97
G=-0.397

Exhibit 18
Tax Map

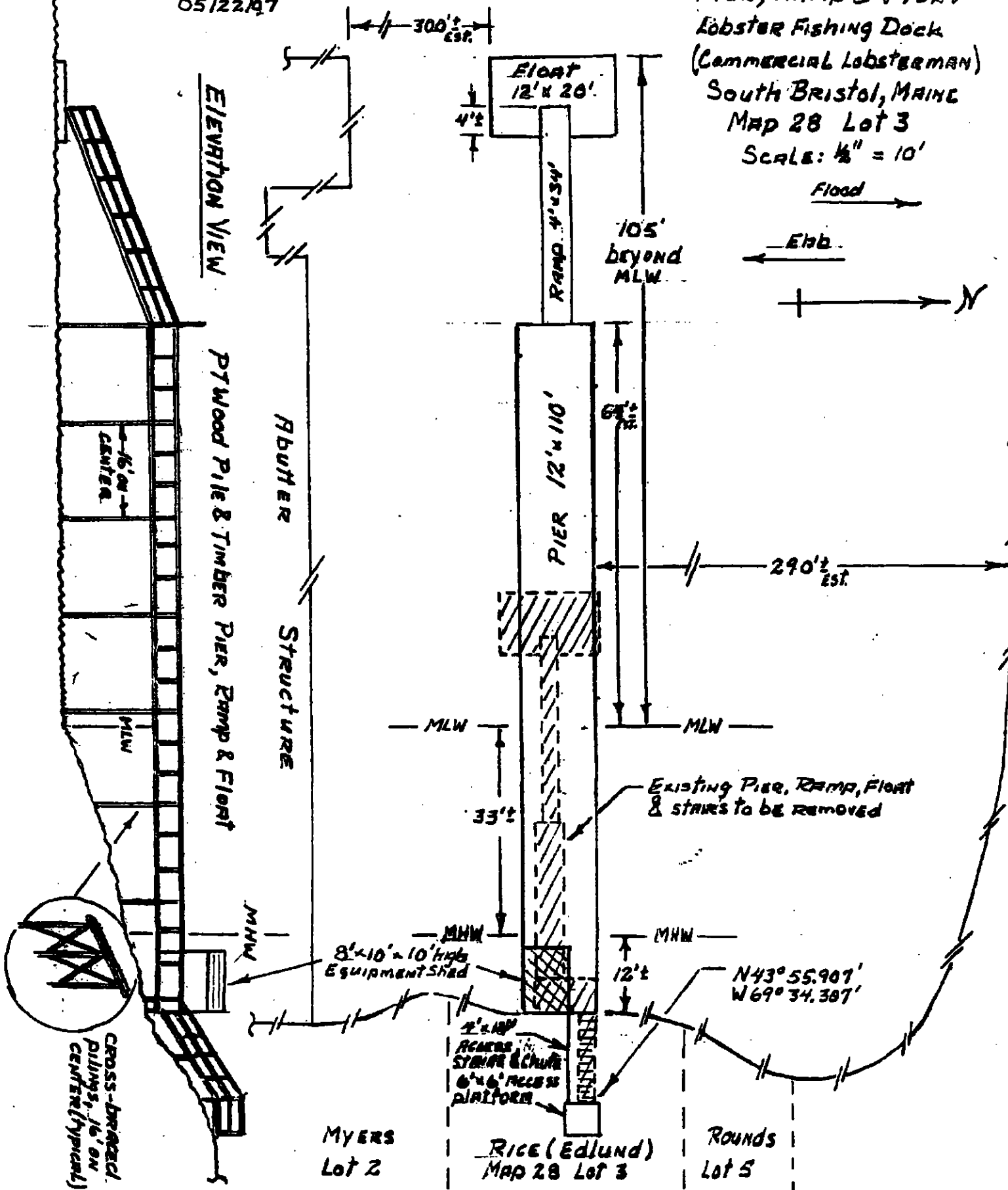


DRAWING BY:
LEBLANC ASSOCIATES, INC.
Joseph B. LeBlanc, President
67 Dipper Cove Road
Ort's Island, ME 04055
05/22/97

PROPRIETARY DRAWING

Exhibit 2

DAVID E. RICE
PIER, RAMP & FLOAT
Lobster Fishing Dock
(Commercial Lobsterman)
South Bristol, MAINE
Map 28 Lot 3
Scale: 1/4" = 10'



DECEMBER 12, 2006

(date)

Proprietary Agreement

Mr. Joseph D. LeBlanc, President
 LEBLANC ASSOCIATES, Inc.
 67 Dipper Cove Road
 Orr's Island, ME 04066

RE: Agent Representation Authorization
Pier, Ramp & Float System Permitting

DAVID RICE
 (Applicant name)

CLARKS COVE ROAD
 (address)
SOUTH BRISTOL, ME

MAIL ADDRESS:

PO BOX 15
WALPOLE, ME 04573

Dear Joe:

This letter authorizes LEBLANC ASSOCIATES, Inc. to represent the above-named party before any and all government agencies and other parties including, but not limited to:

1. U.S. Army Corps of Engineers
2. Maine Department of Environmental Protection
3. Maine Department of Inland Fisheries and Wildlife
4. Maine Department of Conservation, Bureau of Parks and Lands
5. Local municipality permitting authority

concerning obtaining certain permits required to construct or modify a Pier, Ramp and/or Float System at the location described above, in the municipality of South Bristol, Maine.

Sincerely,

DAVID RICE
 (print name of Applicant)

→ David Rice
 (signed by)

12/18/06
 (date)

(title)



David E. Rice
MINOR PERMIT MODIFICATION
Commercial Pier, Ramp & Float
(Applicant's pier with traps – looking out from upland)





Right Abutter's Home (at top of hill)

VIEW FROM RIGHT ABUTTER

**View of Applicant's Pier
(from same position in field as upper photo)**





from right abutter's property line

VIEW OF PIER FROM RIGHT ABUTTER

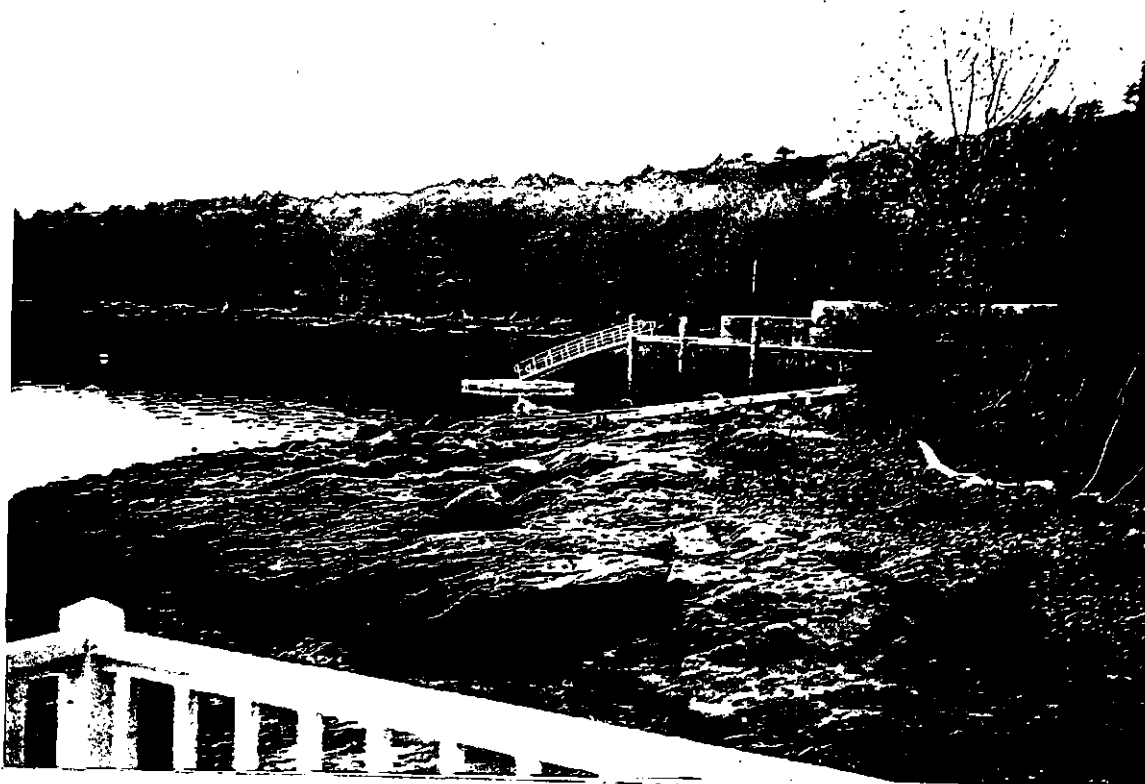
from right abutter's beach
(note left abutter's commercial dock in background)





VIEW FROM LEFT ABUTTER
(cove view from left abutter's summer rental cottage)
[Note: left abutter (Myers) has dropped all
objections to Applicant's Commercial Pier]





Applicant's Commercial Pier

VIEW FROM LEFT ABUTTER
(from left abutter's summer rental cottage)

Left Abutter's Commercial Pier





RIGHT ABUTTER'S BEACH
(view from applicant's property line)

DAVID E. RICE
South Bristol, Maine
PIER, RAMP & FLOAT SYSTEM

Permit # L-23698-4E-A-M

MINOR REVISION APPLICATION

SUPPLEMENTAL INFORMATION

07-02-09

Typical Trap activity on Pier

- **March** - 1st half of month - same as January (minimal to no fishing – maximum trap storage on pier – some repair / maintenance activity on equipment on flat, clean, working surface of pier, all dependent on weather; working with tools and equipment maintained in 8' x 10' equipment shed on pier); 2nd half of month - once weather conditions permit and before the fishing season begins, Applicant begins the routine, early spring work of readying his 600 traps and related gear on the pier, in a location which will be immediately accessible to the Applicant's lobster boat; performing maintenance, repair, and assembly of trap strings and related gear
- **April** - Applicant continues the routine spring work of readying his 600 traps and related gear on the pier, performing maintenance, repair, and assembly of trap strings and related gear
- **May** – same as April
- **June** – part of month - same as April; Applicant, working off pier, may also start setting trap strings to determine if lobsters are beginning to move in closer to shore, and where they are located
- **July** – setting the majority of trap strings; bulk handling of Applicant's traps onto the boat for setting, all in a relatively short period of time, as the season begins in earnest (when the lobsters start to move in from deeper waters) from pier-to boat-to indicated active fishing areas in water; active lobster fishing period; back and forth from pier to boat to water and return; some traps on pier throughout
- **August** – active lobster fishing – some traps on pier throughout; some set trap strings returned to pier for repair & maintenance and/or cleaning and "resting" on pier to improve individual trap fishing-effectiveness
- **September** – same as August
- **October** – same as August
- **November** – part of month; same as August, subject to weather; latter portion of month some trap strings returned to pier as lobsters begin to move off shore and fishing production starts to drop off
- **December** – some limited fishing activity may continue depending on weather and continued presence of some lobsters; bulk trap string removal begins in earnest; setting

on pier; some limited repair and maintenance of traps and gear on pier before winter commences; trap storage on pier commences (as noted previously, this shoreline adjacent to the Applicant's pier presents a harsh environment during the winter season, with few visitors)

- **January** - minimal to no fishing – maximum trap storage on pier – some repair / maintenance activity on equipment on flat, clean, working surface of pier, all dependent on weather; working with tools and equipment maintained in 8' x 10' equipment shed on pier
- **February** – same as January

It should also be noted that the typical fishing sequence described above, can shift by a month +/- from year to year, depending on water temperature, mild or bitter winter, and/or other factors which frequently change, beyond the control of the commercial fisherman.

Finally, there are years when the Damariscotta River has been closed to scallop draggers by DMR, who when permitted, will drag the bottom of the river from Jan 1 through April 15, (typically) or as otherwise permitted. During such dragger-closed years, the Applicant and others may keep a few trap strings in the water, as there is minimal risk of draggers destroying their traps and gear, and lobster prices make it worthwhile to continue to fish for lobsters. During such winters, the Applicant may continue his lobstering activities for all twelve months of the year.

In summary, the pier was designed to meet the functional needs of the Applicant, a commercial fisherman, during up to a nine month period in a typical year. It is reasonable to allow the Applicant the superior advantages of this pier for trap storage during the winter months as well.

DAVID E. RICE
Natural Resources Protection Act
Removal of Special Condition #5 – South Bristol

**ADDITIONAL INFORMATION FROM THE DEPARTMENT'S
RECORD**

TO: **Beth Callahan**, Project Manager
Dept. of Environmental Protection (DEP),
Bureau of Land and Water Quality Control

FROM: Department of Marine Resources (DMR)

SUBJECT: REQUEST FOR PROJECT REVIEW,

PROJECT: DEP Application #: L-23697-4E-A-N
Applicant: David E. Rice
Location: South Bristol (Clark Cove, Damariscotta River)
Type of Project: Pier, Ramp & Float Replacement & Expansion

The above proposed project has been carefully reviewed and considered by DMR personnel.

DMR personnel visited the site on July 16, 2007 at 0845 at approximately low water, and again on August 9, 2007 at 1430 at low water.

DMR understands that the applicant is proposing to remove an existing 5 ft. x 30 ft. pile supported pier constructed in the 1950s that had at one time a 3 ft. x 30 ft. ramp and 10 ft. x 15 ft. float that extended approximately 20 ft. beyond MLW. This would be replaced with a 12 ft. x 110 ft. pile supported pier (21, 12 in. dia. piles) that would extend 64 ft. beyond MLW with an east - west orientation and an average deck of ~ 7 ft. above the intertidal substrate. A 4 ft. x 34 ft. ramp would connect to a 12 ft. x 20 ft. float to provide ~ 4 ft. of water at MLW according to the permit application. The pier would be accessed by a 6 ft. x 6 ft. platform and a 4 ft. x 14 ft. stairway from the upland. The stairway would be fitted with a trap slide. The applicant also proposes to construct an 8 ft. x 10 ft. x 10 ft. high equipment shed on the pier above Mean High Water (MHW). The applicant stated he does not intend to store lobster bait at this site, and intends to continue to sell his catch at the Gut in South Bristol.

The upland is a small lot with a house located ~ 50 ft. from the edge of the supratidal bank. The supratidal is ledge outcrop rising ~ 4 ft. high from MHW with a 4 ft. high vegetated bank above that. The extreme upper intertidal is ledge. Below this the intertidal is ledge/stone/cobble/gravel with ~ 75% rockweed cover. There is a commercial pier in the cove about 300 ft. to the southeast. A mooring with a sailboat is situated ~ 75+ ft. from the seaward end of the proposed float. There appeared to be a couple of other moorings, not used recently, further out beyond this first mooring. A mooring with floats for trap storage is located ~ 200 ft. south of the proposed float. An aquaculture lease, ~ 15 acres in size, for suspended culture of blue mussels, oysters, hard clams and soft-shell clams is located in the cove ~ 400 ft. from the end of the proposed float at its closest point. Lobster traps are located outside of the cove.

This project as proposed should not result in any significant adverse impacts to traditional fishing activity, recreation, navigation or riparian access. The width of the proposed pier deck to its height is more than the usually recommended 1:1. Shading and subsequent loss of marine vegetation would likely result.

DMR recommends that consideration be given to further reducing the width of the pier decking, and that if access to the existing mooring with sailboat becomes a problem due to the proposed pier, ramp and float and its use that the applicant bear the cost of moving that mooring to a better location.

GEORGE D. LAPOINTE
COMMISSIONER OF DMR
Date: September 6, 2007

TO: **Beth Callahan**, Project Manager
Dept. of Environmental Protection (DEP),
Bureau of Land and Water Quality Control

FROM: Department of Marine Resources (DMR)

SUBJECT: REQUEST FOR PROJECT REVIEW,

PROJECT: DEP Application #: L-23698-4E-B-N
Applicant: David E. Rice
Location: South Bristol (Clark Cove, Damariscotta River)
Type of Project: Trap Storage on Pier

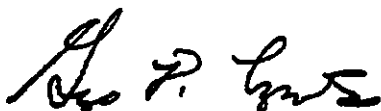
The above proposed project has been carefully reviewed and considered by DMR personnel.

DMR personnel visited the site on July 16, 2007 at 0845 at approximately low water, and again on August 9, 2007 at 1430 at low water.

DMR understands that the applicant is requesting the DEP remove or revise a condition on his current permit that prohibits trap storage on his pier.

DMR commented on the applicant's pier proposal on September 6, 2007 (attached). DMR concluded at that time that the "project as proposed should not result in any significant adverse impacts to traditional fishing activity, recreation, navigation or riparian access. The width of the proposed pier deck to its height is more than the usually recommended 1:1. Shading and subsequent loss of marine vegetation would likely result." DMR recommended at that time "that consideration be given to further reducing the width of the pier decking [to reduce shading]..."

Storage of traps would contribute to shading of marine vegetation and the deposition of debris from trap maintenance onto the intertidal and surrounding waters. Upland storage of traps, where possible, is preferred. In this case that appears to be a viable option. DMR recommends that the current permit condition that prohibits storage of traps on the pier remain in effect.



GEORGE D. LAPOINTE
COMMISSIONER OF DMR
Date: August 31, 2009

3/11/10

Present:

Mike Mullen, DEP

Joe LeBlanc, agent

Eric Ham, DEP

David Rice, applicant

Beth Callahan, DEP

7 Fishermen (did not obtain names)

1. Joe discussed background history, and discussed current application.
2. Joe disagrees w/ DMR comments "Storage will lead to shading of marine veg."
3. Joe stated that there are no visual impacts.
 - showed locations & distances from abutting properties using aerial photo & other photos
 - there is no visibility from Myers Field
 - can see dock from Rounds/Edlund property line
4. TRI has been demonstrated, has TRI to property, ROW, & dock.
5. Joe prepared sequence of events of fishing activity.
6. Stated alternatives (D. Rice)
 - has to haul traps to a location 5 miles away
7. Mike outlined when trap storage occurs according to Joe's document (during the fishing off-season ~ December - March)

8. DEP does not regulate activities on grandfathered piers. Currently, when we issue permits we now regulate temporary activities associated with the dock. We issue permits under the wetland & Waterbodies Rules. We are limited by rules. We cannot issue, if not water dependent. Storage is not water dependent.

9. C. Rice disagrees w/ rules.

10. Fisherman says DEP is setting precedent. - No one will have docks.

11. The law applies to people building new docks.

12. Joe - It is unreasonable to impose no trap storage. The traps have a function to hold down a pier, especially during storms.

13. Alternatives - $\sim 60' \times 20'$

Upland storage - Leach Field on property, traps would hinder Leach Field, property is 1 acre, soil is clay.

Other pier - David would agree to no longer store traps there, if condition were removed.

At Myers dock, they keep some traps on a float.

- has mooring in "The Gut" still

DAVID E. RICE
South Bristol, Maine
PIER, RAMP & FLOAT SYSTEM

Permit # L-23698-4E-A-M

MINOR REVISION APPLICATION

SUPPLEMENTAL INFORMATION 03-12-10

TO: Beth Callahan, DEP Project Manager
Michael Mullin, Enforcement & Field Services Coordinator
Eric Ham, DEP Project Manager
cc: James Cassida, Division Director

FOREWORD

Thank you Mike, Beth and Eric for meeting with David Rice, myself, and the group of lobster fisherman from the South Bristol area who attended our 03-11-10 meeting, and who strongly support David Rice's (Applicant) request to have condition #5 removed from his commercial dock, DEP permit. It is unfortunate, that Jim Cassida was unable to attend as well, to hear, first hand, what will be important to the Department's decision in this matter. We are confident that by transmitting copies of this Supplemental Information to Jim, as well as through a full briefing of Jim by the DEP staff who were present at this meeting, he will gain a complete understanding of the relevant, important considerations in this matter.

Out of 2500 miles of Maine coastline, there remains only 25 miles of commercial waterfront. This has been recognized as such a serious problem for the backbone of Maine fishing heritage, that a special task force has been established by the State of Maine, specifically tasked to preserve and promote Maine's remaining fishing waterfront, both through strong encouragement of the fishing industry, and through individual tax incentives, as well as incentives to permanently commit such properties to commercial fishing use only in the future.

As described previously in the NRPA application, the Applicant and his stern man put in long hours on the water during the fishing season, leaving early in the morning, and returning at the end of the fishing day, every fishing day possible. The Applicant requires the capacity to readily handle, service, maintain, repair, circulate, and store his 600 traps, on and off the pier, before, throughout and after the lobster fishing season.

During a relatively limited portion of the spring, once weather conditions permit, and before the fishing season begins, the Applicant needs to ready his 600 traps and related gear on the pier, in a location immediately accessible to the lobster boat, in order to bulk handle his traps

onto the boat for setting, all in a relatively short period of time, as the season begins (when the lobsters start to move in from deeper waters).

Further, traps are periodically serviced, cleaned, repaired and "rested" throughout the season, in order to make them more effective when lobster fishing. To accomplish this, the Applicant needs to approach the pier at high tide, with his lobster boat, throughout the season, in order to handle traps and gear on and off the boat, directly to and from the pier.

At the end of the season, in late fall, when lobster fishing results begins to tail off, and/or weather becomes a significant factor, the Applicant's traps are then removed from the water, again in bulk manner, over a relatively short period of time, which requires adequate, readily available capacity, for approaching the pier at high tide and directly off-loading the traps onto the pier.

The Applicant is older (65), as is his stern man (72), such that any reasonable, ready access to his equipment and gear, on the working level of the pier, will further reduce the drudgery of this bulk-handling fishing occupation. This is a tough, labor intensive, dangerous industry, performed by some of the hardest workers in Maine. Any steps which can reduce the repetitive laborious, back-breaking tasks associated with lobster fishing, should be implemented.

Upon the Applicant's eventual phase down of his own lobstering activities, and /or that of his stern man, the Applicant's plan is that a younger fisherman, steeped in this proud tradition from this well-established fishing village, who needs access to the water, will eventually walk in his foot steps, and use this commercial wharf for lobster fishing, continuing in the long-established tradition of Maine lobstermen, a common practice in South Bristol and throughout Maine. It is imperative that no undue restrictions be placed on this wharf, or its use, now or in the future, which would discourage such willingness by the next generation of Maine fishermen.

Condition #5 of the Applicant's DEP permit does the opposite. It mandates unnecessary and unreasonable repetitive trap and gear handling, wastes valuable boat fuel (with its own impacts), and results in many unproductive man hours of not only the Applicant and his stern man, but also that of four or five other lobstermen who would have to assist the Applicant with the burdensome task, yet have their own gear to attend to each fall and each spring.

Lobster traps will be present on the Applicant's dock by necessity much of the year, as an inherent part of the lobster fisherman's daily work. There are very few months, or partial months, of the year which could be classified as trap storage only. Attachment 2, further describes the typical lobster fisherman's annual cycle of commercial wharf use in this regard.

There is no reasonable, inherent impact of storing traps on a wharf during the non-growing, dormant, winter season. To suggest otherwise is without reasonable basis. This is demonstrated by the Corps of Engineers unwillingness to accept an opinion regarding the

presence / non-presence of eelgrass (which dies off during colder periods each year), unless such presence or non-presence is observed after May 15 or before October 15 (ie., the typical growing season), in general, unless there is an unusually warm spring or extended Indian summer in the fall, respectively.

This particular wharf is located in a relatively isolated cove, with a more extensive, commercial fishing operation on one side, and a neighbor on the other side who spends their extended winters in Paris, whose house is not winterized, and even in the unlikely event of being present during the coldest, harshest period of the year, has little visibility of the dock, let alone stored traps thereon, as demonstrated by photos presented previously to DEP staff and shown to Mike Mullin at our 03-11-10 meeting.

The same few complaining parties, who have continued to harass the Applicant in every manner possible, and have repeatedly called or written the DEP, solely due to the presence of the words in Condition #5, have no reasonable view of the Applicant's wharf or stored traps, from their residences along Clark Cove Road or elsewhere.

In summary, Condition #5, namely, "No trap storage will be permitted on the permanent pier", of the Applicant's DEP permit, and which involves seasonal components in the most practical sense to a reasonable person, should be removed from the Applicant's DEP Permit.

The following confirms the Applicant's description of the non-availability of the immediate upland site for trap storage, further description of the impracticality and unreasonableness of other alternatives, and the Applicant's commitment regarding trap storage elsewhere, all as described in detail in our 03-11-10 meeting with DEP staff.

UPLAND TRAP STORAGE

Enclosed please find Attachment 1 which describes the location of the septic tank, leach field well, home, etc. on this postage stamp lot (map 28 Lot 3). Also included is Exhibit 1B (Tax Map), for your reference, from the permit modification application, which further describes this 0.4 acre lot on Clark Cove.

As described in detail by the Applicant to Eric Ham while on site, and at our 03-11-10 meeting, the septic tank and leach field location on the west (water) side, and related, specially prepared, overlying surface area, which are designed to meet the requirements of the Maine Department of Human Services / Health Engineering, effectively precludes winter on-site storage, as well as effective, reasonable passage for handling and/or moving the Applicant's 600 traps upland and beyond.

Further, the Towns' side setbacks, as well as the slope of the ground on this site, preclude practical storage along the north and south edges of the property.

The gravel entry road / R.O.W to the site leads to the east side of the property, which is principally used for parking for the two care givers who visit Mrs. Edlund daily, the daily visitors who look in on this frail, 95+ year old woman, including the Applicant, as well as the service trucks (heating fuel, CMP meter readers, maintenance vehicles, etc., and is unavailable for winter trap storage.

This site, like much of the Maine coast, has underlying clay which results in poor water absorption, coupled with increased surface run-off during storms. Any storage in the remaining area in the front / approach (east) side of the dwelling would kill the existing surface vegetation, further increasing the surface run-off which comes down the gravel drive / R.O.W., raising the water table. This could impact on the designed effectiveness of the lower-elevation leach field, as well as further aggravating an already "wet" basement area, under the home.

The Applicant, as described to Eric Ham while on site, as well as at our 03-11-10 meeting, tried one year of water-side storage of traps over the leach field since the wharf was constructed, in an attempt to accommodate the DEP, which killed the required surface vegetation over the field, resulting in erosion of the surface. If this was repeated annually, it could impact the leach field effectiveness, violate the leach field permit, and result in unwanted sedimentation carryover into Clark Cove. This surface area has subsequently been replanted and vegetation restored as required in the leach field plan. Such on-site storage on and around the leach field will not be repeated again, for the reasons described above, as confirmed by the Applicant at our 03-11-10 meeting.

In addition, the left abutter (Myers) has recently installed a fence right along the property line including the parking area, to assure no "casual extension" of use of their property by the Applicant for any purpose.

The Applicant has no right to store traps on the R.O.W. which is legally available for passage by foot or vehicle only.

In summary, on-site storage of traps is impractical and unreasonable.

ALTERNATE TRAP STORAGE -1

As described at our 03-11-10 meeting, alternative off-site trap storage would require this 65 year old Applicant, and his 72 year old stern man, and those four to five men, whose assistance would be required, to transport each of these 40 lb+, 600 traps by repeated trips by boat, 5 miles each way over water, to the co-op site in the "gut (South Bristol Harbor) each fall, off-load each trap and related gear to a pickup truck, transport them by road to his home again in repeated cycles, off-load them and then hand-carry them 100 yards +/- to a location marginally suitable for trap storage.

This unwarranted and unnecessary task would then have to be repeated in reverse each spring.

In summary, this is an impractical and unreasonable alternative, requiring multiple handling, loading and unloading, and carrying of each of the 40 lb, 600 traps plus related gear repetitively, wherein these traps could practically remain on the wharf during this brief "winter" storage period, as further described in Attachment 2, with little or no impact.

OTHER OFFSETS

The "S-Road" site, owned by the Applicant's brother, sister-in law and the Applicant has limited access by boat, due to the extensive rock and ledge outcrop which exists on both sides of the S-Road wharf (as shown in photos to Mike Mullin at our 03-11-10 meeting, and previously included as part of the Applicant's wharf application / discussion of alternatives), and has already been demonstrated to, and determined by the DEP, as an unreasonable alternative, inherently dangerous to approach by boat, with a very limited approach-time window during each tide cycle, and therefore as an unreasonable, non-alternative to the Applicant's permitted Clark Cove wharf, ramp and float.

The Applicant has no interest in storing traps at this site for the reasons described above.

Notwithstanding the above, as described in our meeting, as a condition of approval by the DEP of the Applicant's on-wharf trap storage request in Clarks Cove, upon removal of Condition #5, the Applicant would agree to preclude trap storage on the "S-Road" site wharf by any third party as well. The owners of the property, which include the Applicant, have agreed to this restriction. In summary, such agreed-to condition by the Applicant, would preclude trap storage by a third party at the S-Road site, regardless of the degree of risk any such third party might be willing to undertake.

SUMMARY

On behalf of the Applicant, we respectfully request that, for the reasons described above, Condition #5 of the Applicant's DEP Permit # L-23698-4E-A-M, ie., "No trap storage will be permitted on the permanent pier" be removed from the permit.

Should you have any questions in this regard, please call me at TEL: 833-6462.

Sincerely,

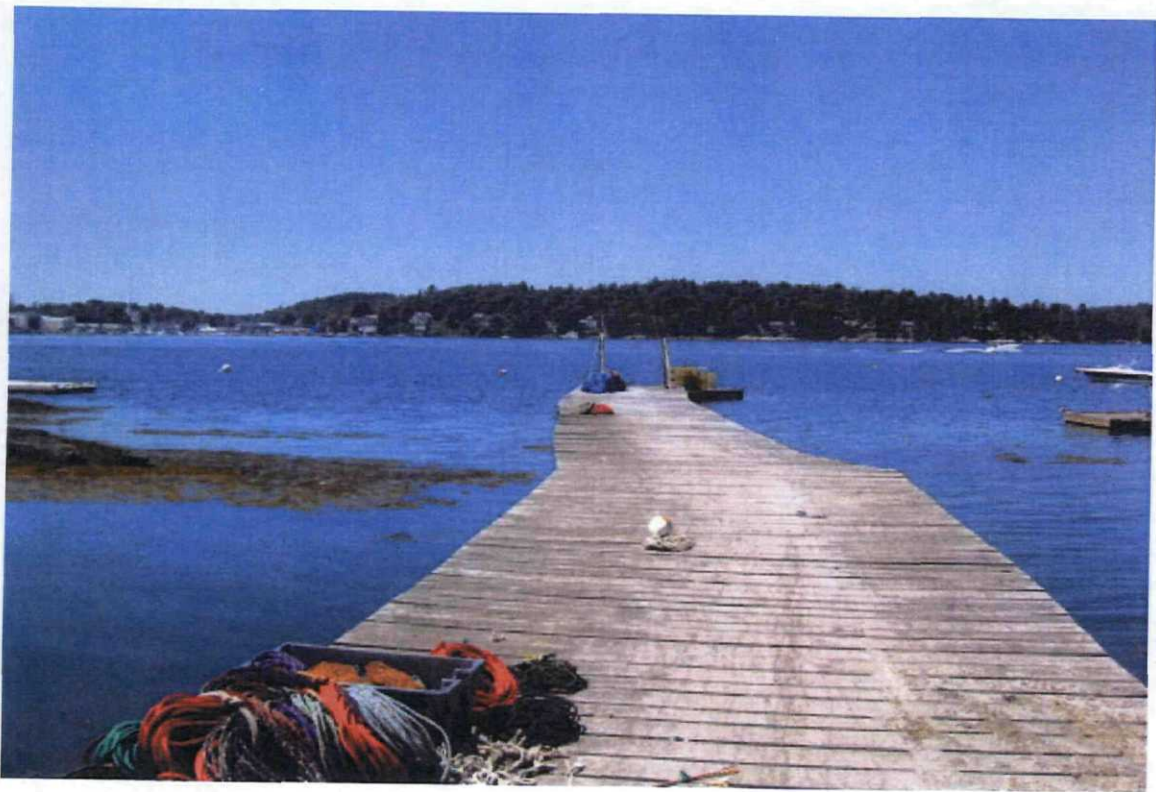


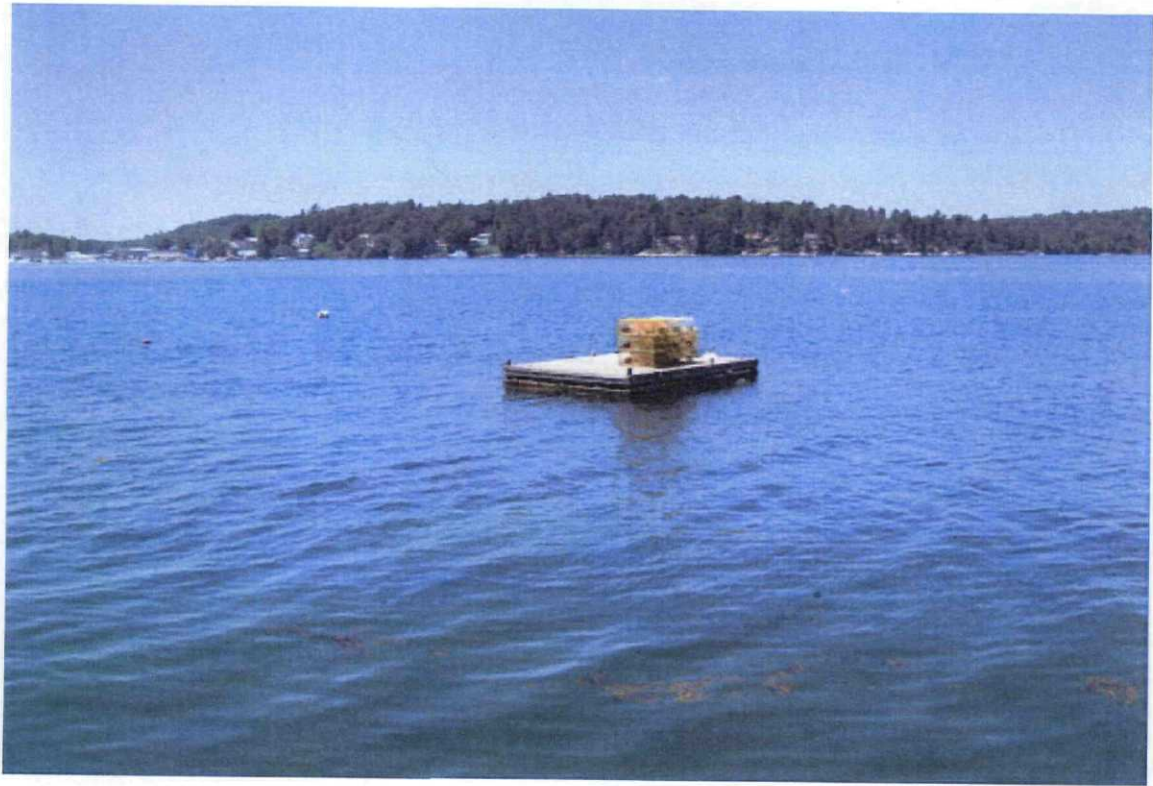
Joseph D. LeBlanc, President
LEBLANC ASSOCIATES, Inc.

July 16, 2008

Pier at Jones Point

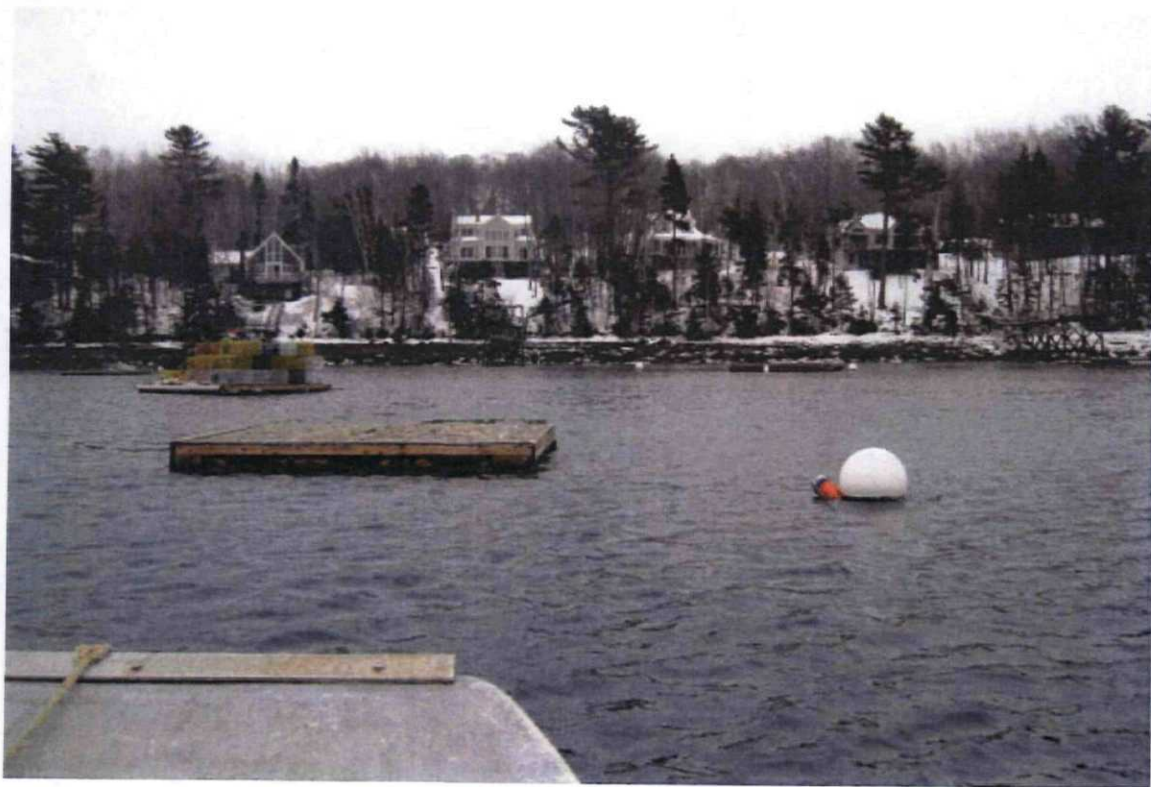






March 6, 2009

Float + Mooring at "The Gut"





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Rockweed Research Priorities Symposium Summary

Rockweed Research Priorities Symposium
February 10, 2010 (9:30-3:30)
Buchanan Center, University of Maine, Orono
[Agenda, PDF file, 2 pages, 14 kb](#)

[Condensed minutes of the symposium here, PDF file, 18 pages, 133 kb](#)

Symposium Schedule

As a result of this meeting, representatives of the rockweed industry, the research community and public resource managers wish to:

1) Summarize what we know about the rockweed resource, its ecology and habitat, the effects of harvesting on the marine environment and other species, and the economic and social benefits and costs of this industry; and

2) Identify and prioritize research needs that will expand our knowledge and help to ensure a sustainable resource.

10:00 **Welcome** ([Maine Seaweed Council](#), [Maine Department of Marine Resources](#), [University of Maine Sea Grant](#))

Overview of Meeting and Outcomes and Working Agreements
Introductions

10:10 **History and Overview of Rockweed Harvesting and Economics in Maine**
Maine Seaweed Council-Robert Morse
(Brief Presentation with time for some questions)

10:40 **Broad Topic # 1: Biomass Assessment (Dr. Raul Ugarte)**

Why is this biomass assessment important? What does past and current research tell us about the location, quantity and quality of rockweed along Maine's coast? What do we need to know more about?

[Dr. Ugarte's presentation, PDF format, 50 slides, 6.3 MB](#)

11:15 **Broad Topic # 2: Ecology and Habitat (Dr. Thomas Trott)**

Why is knowledge about ecology and habitat important? What do we know about the ecology of places where rockweed grows, including ways in which rockweed serves as habitat for other species? What do we need to know more about?

[Dr. Trott's presentation, PDF format, 15 slides, 378 kb](#)

12:45 **Broad Topic # 3 Effects of Harvesting (Dr. Jill Fegley)**

Why is knowledge about effects of rockweed harvesting important? What do we know about how harvesting affects the marine environment and other species? What do we need to know more about?

[Dr. Fegley's presentation, PDF format, 20 slides, 1 MB](#)

1:45 **Broad Topic # 4 Economic and Social Benefits and Costs of Rockweed Harvesting**

Why is knowledge about economic and social benefits and costs important? What do we know already? What research is needed and how would we frame the questions?

2:30 **Prioritization of Research Suggestions**

(We will use preference voting and seek consensus from participants on high,

The background image is a photograph of a rugged coastal landscape. In the foreground, there are dark, wet rocks covered in seaweed. In the middle ground, a sandy beach is visible, followed by a dense forest of evergreen trees on a rising slope. The sky is a clear, pale blue.

Ecology and Habitat

**Tom Trott
Friedman Field
Station/Suffolk
University**

**Rockweed Research Priorities Symposium
10 February 2010**

Overarching Questions

- Why is knowledge about ecology and habitat important?
- What do we know about the ecology of places where rockweed grows?
- What do we know about ways rockweed serves as habitat for other species?
- What are our gaps in knowledge about rockweed ecology and habitat?

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10 February 2010

Why is knowledge about ecology and habitat important?

- Nutrient Cycling/Budgets (turnover, carbon, energy)
- Nearshore Physical Affects
 - Currents, Storms, Run-off
 - Erosion, Sedimentation/trapping
- Habitat and Refuge
 - Invertebrates
 - Fish
- Foraging Habitat
 - Grazers
 - Invertebrate predators
 - Fish
 - Birds

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What do we know about ecology where rockweed grows?

- Exposed and sheltered rocky shores
 - Substrate ranges from bedrock to cobble
 - Grows to greater length in sheltered areas
- Northern hemisphere, circumglobal
- Relatively free from anthropogenic nutrient pollution
- Can be nursery areas for fish, lobster , and a variety of invertebrates
- Can be feeding areas for birds, i.e., eiders, black ducks

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What do we know about ways rockweed serves as habitat for other species?

- Attachment for Epifauna/Epiphytes
- Refuge for Invertebrates, Fish to hide
- By Serving as a Habitat for Invertebrates and Fish, Rockweed can be a Place for Finding Food and can be Food to Some Species as well.

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Rockweed as Habitat

- Habitat for Epiphytes
- Habitat for Invertebrates
- Grazing and Predation by Invertebrates
- Foraging and Refuge for Fish
- Foraging for Birds

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Architecture of Habitat

- Structure changes between low and high tide
- Rockweed bed assemblage of branched shoots within clumps
- Structure measured by number of branches, lateral and dichotomous on each shoot, length and thickness of shoot
- Density of clumps structural component at scale of bed
- At smallest scale epiphytes living on shoots and/or receptacles

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Plant Architecture: leads to structure of rockweed beds

- Base

- Hold fasts
- Sheltered from light and wave action
- Primary shoots and clumps widely spaced

- Middle

- Most complex lateral and dichotomous branches with/without epiphytes

- Distal

- Less complex with few laterals and epiphytes

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Invertebrate Communities

- Size Ranges from Small Harpacticoid Copepods (0.06mm) to Snails (>1cm)
- Abundances
 - Can be very high- example 22,000 m² juvenile mussels
 - Geographical variation can be great within regions
 - Seasonal changes-lowest in winter
- Community Composition
 - Seasonal changes-species appearance/disappearance
 - Major groups represented year-round
 - Can vary according to substrate plants attached to

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Dynamics of Canopy Invertebrates

- Most are Motile
 - Move within and between beds
- Movement influenced by physical factors
 - Temperature-cooler lower regions
 - Moisture at low water
- Turnover is high with short life span, high reproductive capacities and ease of emigration

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Habitat for Fish

- Types: Resident vs. Visitor Fish
 - Rock Gunnel vs. Pollock
- Visitors often have Juvenile Stages that use the Rocky Intertidal as Nursery Ground
- Visitors often move in and out of Rocky Intertidal with Tide
 - Juvenile Pollock leave on Falling Tide and return on Rising Tide

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Habitat for Foraging Fish

- Rocky intertidal has great taxonomic diversity for potential prey
- Passamaquoddy sampled fish foraged mostly on crustaceans (consistent with other regions of the globe)
- Invertebrates associated with algae comprise the greatest average volume in stomachs

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Refuge for Fish from Predation

- Small fish comprised diet of at least 6 species of piscivorous fishes in Passamaquoddy Bay-at risk from 16 fish species
- Piscivorous birds forage during day at all stages of tidal cycle
- Many birds prefer to forage in fucoids rather than open water (example common tern vs. kingfisher)
- Presence of predators (birds and fish) can be seasonal depending on species

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Foraging by Birds

- Invertebrate Predators
 - Common eiders, black ducks, and mallards can use rockweed as a main foraging habitat
 - Buffleheads, scoters, sandpipers, and plovers also forage there but not primary foraging habitat.
- Fish predators
 - Cormorants, loons, herons, terns, grebes, kingfishers, mergansers, (osprey)
- Bird predators
 - Black-headed gulls and Bald Eagles feed on eider ducklings

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What are our gaps in knowledge about the ecology where rockweed grows and rockweed as habitat? *...just a few for thought...*

- How much habitat loss and/or change in habitat structure is too much?
- How might the role of rockweed as habitat change with different harvest levels?
- What is the role of low trophic level species in affecting rates of recovery for commercially important species?
- What are the feeding preferences of invertebrates, fish and birds, and how is it affected by changes in structure and/or invertebrate abundance resulting from harvesting?

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